



United States Consulate General – Hong Kong
Consular Section, American Citizens Services
Phone: 2841-2211; 2841-2323; Fax: 2845-4845
26 Garden Road, Central, Hong Kong
<http://hongkong.usconsulate.gov>

Renunciation of United States Citizenship

Renouncing U.S. citizenship is a voluntary act and not easily reversed. Those seeking renunciation must schedule an appointment for a renunciation interview. Items required for the interview include U.S. passport(s), an original Naturalization Certificate (if applicable) and any others documents that establish U.S. citizenship. The U.S. Government will not approve a renunciation if this renders the person stateless. Applicants must therefore present a valid passport from the country they plan to use for their nationality after renouncing U.S. citizenship. Those seeking renunciation are required to bring two witnesses. The two witnesses must be neutral and without conflict of interest.

Renouncing U.S. citizenship does not release one from tax, military or other U.S. legal obligations. Those who renounce U.S. citizenship will no longer receive U.S. consular support abroad and will be subject to current visa requirements for future travel to the United States.

During the renunciation interview, the interviewee will be asked to sign a Statement of Understanding and an Oath of Renunciation before a consular officer. These documents record that the applicant understood the serious nature and consequences of the renunciation and undertook this action voluntarily. The two witnesses will attest to these facts by signing the Statement of Understanding after the applicant has signed the document.

After the interview, the case will be forwarded to the Department of State for review and decision. Only when the Department of State approves the case is the renunciation considered complete. The length of time for Department of State approval may be several months. Our office will contact you when this process is complete.

After the renunciation interview, the U.S. Consulate will retain the renunciation applicant's U.S. passport, U.S. Naturalization Certificate and other applicable or requested documents until further notice. When the Department of State contacts our office to confirm approval of the case, we will notify the renunciation applicant. If the renunciation case is approved, the applicant's U.S. passport, U.S. Naturalization Certificate and any other applicable or requested documents will be canceled and returned to the applicant.

To the U.S. Consulate General, Hong Kong

I have received the following materials concerning renunciation of U.S. Citizenship:

- Statement of Understanding regarding renunciation of the U.S. citizenship,
- Oath of Renunciation of the Nationality of the United States,
- Information on the U.S. Health Insurance Portability and Accountability Act of 1996.

Name: _____

Date and Place of Birth: _____

Passport number, date and place of issue: _____

Signature: _____

Date:

STATEMENT OF UNDERSTANDING

I, _____, understand that:

1. I have the right to renounce my United States citizenship.
2. I am exercising my right of renunciation freely and voluntarily without force, compulsion, or undue influence placed upon me by any person.
3. Upon renouncing my citizenship I will become an alien with respect to the United States, subject to all the laws and procedures of the United States regarding entry and control of aliens,
4. If I do not possess the nationality/citizenship of any country other than the United States, upon my renunciation I will become a stateless person and may face extreme difficulties in traveling internationally and entering most countries.
5. If I am found to be deportable by a foreign country, my renunciation may not prevent my involuntary return to the United States.
6. My renunciation may not affect my military or Selective Service status, if any. I understand that any problems in this area must be resolved with the appropriate agencies.
7. My renunciation may not affect my liability, if any, to prosecution for any crimes which I may have committed or may in the future which violate United States law.
8. My renunciation may not exempt me from U.S. income taxation. With regard to U.S. taxation consequences, I understand that I must contact the U.S. Internal Revenue Service. Further, I understand that if my renunciation of U.S. citizenship is determined by the U.S. Attorney General to be motivated by tax avoidance purposes, I will be found excludable from the United States under the Immigration and Nationality Act, as amended.
9. The extremely serious and irrevocable nature of the act of renunciation has been explained to me by Consul _____ at the U.S. Consulate General at Hong Kong, and I fully understand its consequences.

I do not choose to make a separate written explanation of my reasons for renouncing my United States citizenship. I swear that I have read this Statement in the English language and fully understand its contents.

(Signature)

OATH OF RENUNCIATION OF THE NATIONALITY
OF THE UNITED STATES

(This form has been prescribed by the Secretary of State pursuant to Section 349(a)(5) of the Immigration and Nationality Act, 66 Stat. 268, as amended by Public Law 95-432, October 10, 1978, 92 Stat. 1046)

Consulate General of the United States of America ss :
at Hong Kong

I, _____, a national of the United States,
solemnly swear that I was born at _____, on
_____.

That I formerly resided in the United States at _____
_____, U.S.A.

That I am a national of the United States by virtue of _____

_____.

That I desire to make a formal renunciation of my United States nationality,
as provided by Section 349(a)(5) of the Immigration and Nationality Act and pursuant
thereto I hereby absolutely and entirely, renounce my United States nationality together
with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

(Signature)

Subscribed and sworn to before me this _____ day of _____, 20____ in
the U.S. Consulate General at Hong Kong.

Consul of the United States of America



**CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA
HONG KONG**

INFORMATION FOR DETERMINING U.S. CITIZENSHIP

The following information is needed to determine your present citizenship status and your entitlement to consular services as a citizen of the United States. You may want to consult an attorney before completing this form. If you have any questions about the form, you should discuss them with a member of our consular staff before filling it out. Use extra paper as needed and attach any supporting documents to this form.

1. Name: _____
(Last) (First) (Middle)

2. Last U.S. Passport issued at _____ on _____
(Place) (Date)

3. Date and place of birth _____

4. If not born in the U.S., citizenship acquired by: _____

☐ Naturalization on _____ before the _____
(Date) (Court)
_____ at _____
(City)-

☐ Birth outside the United States to U.S. citizen parent(s)

5. Give dates and countries of residence outside U.S. since birth.

Dates (From -To)	Country
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If additional space is needed, use additional paper.

The U.S. Health Insurance Portability and Accountability Act of 1996, signed into law on August 21, 1996, requires all persons who lose U.S. citizenship to provide a statement as follows:

(A) The person's Tax Identification Number (usually his/her Social Security Number):

(B) The principal foreign residence mailing address:

(C) The foreign country in which the individual is residing:

(D) The foreign country of which such individual is a citizen:

(E) For individuals whose net worth at the date of loss of citizenship is US\$2,000, 000 or more, information detailing their assets and liabilities:

Date: _____

Print name: _____

Initial and Annual Expatriation Information Statement

OMB No. 1545-0074

Attachment
Sequence No. **112**

► See separate instructions. ► Please print or type.

► Section references on this form are to the Internal Revenue Code.

Name	Date of birth (mo., day, yr.)	Tax Year
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Initial or Annual Information Statement. Check the box that applies.

- ☐ Initial Information Statement. Complete Parts I and II and Schedules A and B. Skip Part III (see instructions).
- ☐ Annual Information Statement. Complete Parts I and III and Schedules A and B. Skip Part II (see instructions).

Part I General Information. All filers must complete Part I. See instructions.

- 1 Identifying number (see instructions) ►
- 2 Mailing address and telephone number where you can be reached **after** expatriation
- 3 Address of principal foreign residence (if different from line 2)
- 4 Country of tax residence (if different from line 3)
- 5 Date of notification of expatriating act, termination of residency, or claim of treaty benefits. Check the box that applies and enter the appropriate date.
- a ☐ Citizen. Date notification given to Department of State _____ (see instructions).
- b ☐ Long-term resident. Date notification given to Homeland Security _____ (see instructions).
- c ☐ Long-term resident with dual residency in a treaty country. Date commencing to be treated, for tax purposes, as a resident of the treaty country _____.

Part II Initial Expatriation or Termination Information Statement

- 6 Enter your U.S. income tax liability (after foreign tax credits) for the 5 tax years ending before the date of expatriation.
- | 1st Year
Before Expatriation | 2nd Year
Before Expatriation | 3rd Year
Before Expatriation | 4th Year
Before Expatriation | 5th Year
Before Expatriation |
|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| \$ _____ | \$ _____ | \$ _____ | \$ _____ | \$ _____ |
- 7 Enter your net worth on the date of your expatriation for tax purposes \$ _____
- 8 Did you become at birth a U.S. citizen and a citizen of another country, and do you continue to be a citizen of that other country? ☐ Yes ☐ No
- 9 Do you have substantial contacts with the United States? (see instructions) ☐ Yes ☐ No
- 10 Are you a minor described in section 877(c)(3)? (see instructions) ☐ Yes ☐ No
- 11 Do you certify under penalty of perjury that you have complied with all of your tax obligations for the 5 preceding tax years? (see instructions) ☐ Yes ☐ No

Part III Annual Information Reporting under Section 6039G**Do not** complete this part if:

- Your average annual net income tax liability for years 1-5 (line 6) was \$124,000 or less if you expatriated in 2004 (\$127,000 or less if you expatriated in 2005) and your net worth on line 7 was under \$2,000,000, and you checked **"Yes"** to line 11, or
- You checked **"Yes"** to line 8 and **"No"** to line 9, and you checked **"Yes"** to line 11, or
- You checked **"Yes"** to line 10, and you checked **"Yes"** to line 11.

12 List all countries (other than the United States) of which you are a citizen.**a** Name of country**b** How you became a citizen**c** Date you became a citizen**13** Number of days you were physically present in the United States during the current year. If you were present in the United States more than 60 days, skip line 14**14** Were you physically present in the United States for more than 30 days but not more than 60 days during the tax year? ☐ **Yes** ☐ **No****a** Were you performing services for an unrelated employer? ☐ **Yes** ☐ **No****b** If you checked **"Yes"** to line 14a, are you a citizen or resident, fully liable for income tax, in the country in which you were born, your spouse was born, or either of your parents were born? . ☐ **Yes** ☐ **No****Sign
Here**

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than filer) is based on all information of which preparer has any knowledge.

Your signature

Date

Preparer's signature

Date

Schedule A Balance Sheet

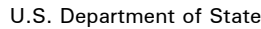
- If this is an initial information statement, list in U.S. dollars the fair market value (column (a)) and the U.S. adjusted basis (column (b)) of your assets and liabilities as of the date of your expatriation for tax purposes.
 - If this is an annual information statement, list in U.S. dollars the fair market value (column (a)) and the U.S. adjusted basis (column (b)) of your assets and liabilities as of the end of the tax year for which you are filing this form.
 - If you are a former U.S. long-term resident (LTR), it may benefit you to complete column (d). Only former LTRs should do so.
- For more details, see the separate instructions.

Assets	(a) Fair Market Value (FMV)	(b) U.S. adjusted basis	(c) Gain or (Loss). Subtract column (b) from column (a)	(d) FMV on beginning date of U.S. residency (optional, for LTRs only)
1 Cash, including bank deposits				
2 Marketable stock and securities issued by U.S. companies				
3 Marketable stock and securities issued by foreign companies				
4 Nonmarketable stock and securities issued by U.S. companies				
5 Nonmarketable stock and securities issued by foreign companies				
a Separately state stock issued by foreign companies that would be controlled foreign corporations if you were still a U.S. citizen or permanent resident (see instructions)				
b Provide the name, address, and EIN, if any, of any such company _____				
6 Pensions from services performed in the United States				
7 Pensions from services performed outside the United States				
8 Partnership interests (see instructions)				
9 Assets held by trusts you own under sections 671–679 (see instructions)				
10 Beneficial interests in nongrantor trusts (see instructions)				
11 Intangibles used in the United States				
12 Intangibles used outside the United States				
13 Loans to U.S. persons				
14 Loans to foreign persons				
15 Real property located in the United States				
16 Real property located outside the United States				
17 Business property located in the United States				
18 Business property located outside the United States				
19 Other assets (see instructions)				
20 Total assets. Add lines 1 through 5 and lines 6 through 19. Do not include amounts on line 5a in this total				
Liabilities	Amount			
21 Installment obligations				
22 Mortgages, etc.				
23 Other liabilities (see instructions)				
24 Total liabilities. Add lines 21 through 23				
25 Net worth. Subtract line 24 from line 20, column (a)				

Schedule B Income Statement

- If this is an initial information statement, provide income information for that portion of the year that ends on the date of your expatriation for tax purposes.
- If this is an annual information statement, provide income information for the tax year for which you are filing the form.

1	U.S. source gross income not effectively connected with the conduct of a U.S. trade or business.				
a	Interest	1a			
b	Dividends	1b			
c	Royalties	1c			
d	Pension distributions	1d			
e	Other	1e			
f	Total. Add lines a through e		1f		
2	Gross income that is effectively connected with the conduct of a U.S. trade or business		2		
3	Income from the performance of services in the United States		3		
4	Gains from the sale or exchange of:				
a	Property (other than stock or debt obligations) located in the United States	4a			
b	Stock issued by a U.S. domestic corporation	4b			
c	Debt obligations of U.S. persons or of the United States, a state or political subdivision thereof, or the District of Columbia	4c			
d	Total. Add lines a through c		4d		
5	Income or gain derived from certain foreign corporations to the extent of your share of earnings and profits earned or accumulated before the date of expatriation (see instructions)		5		
6	Gains on certain exchanges of property that would ordinarily not be recognized (see instructions)		6		
7	Income received or accrued by certain foreign corporations (see instructions)		7		
8	Add lines 1f, 2, 3, 4d, 5, 6, and 7		8		
9	Gross income from all other sources		9		
10	Total. Add lines 8 and 9		10		



The following information is needed to determine your present citizenship status and your entitlement to consular services as a U.S. citizen. You may wish to consult an attorney before completing this form. If you have any questions about the form, you should discuss them with a member of our consular staff before completing the form. Use extra paper as needed and attach any supporting documents to this form.

1. NAME (Last, First, Middle)	2. DATE (mm-dd-yyyy)	PLACE OF BIRTH
3. LAST U.S. PASSPORT ISSUED AT: (a) PLACE	(b) DATE (mm-dd-yyyy)	
4. If not born in the United States, citizenship was acquired by birth outside the United States to U.S. citizen parent(s) or by:		
(a) NAME OF COURT AND CITY	(b) DATE (mm-dd-yyyy)	

Dates (from-to) <i>(mm-dd-yyyy)</i>	Country

If you answered "yes," please explain the benefits you sought or claimed:

7. HAVE YOU-

a. BEEN NATURALIZED AS A CITIZEN OF A FOREIGN STATE?

☐ YES ☐ NO

b. TAKEN AN OATH OR MADE AN AFFIRMATION OR OTHER FORMAL DECLARATION OF ALLEGIANCE TO A FOREIGN STATE?

☐ YES ☐ NO

c. SERVED IN THE ARMED FORCES OF A FOREIGN STATE?

☐ YES ☐ NO

d. ACCEPTED, SERVED IN, OR PERFORMED THE DUTIES OF ANY OFFICE, POST OR EMPLOYMENT UNDER THE GOVERNMENT OF A FOREIGN STATE?

☐ YES ☐ NO

e. RENOUNCED U.S. NATIONALITY AT A U.S. CONSULATE OR EMBASSY?

☐ YES ☐ NO

8. If your answer to all the questions asked in item 7 above is "No," please sign below and return this form to the person who asked you to complete it. If you are completing this form at home, mail it in the enclosed envelope to the embassy or consulate.

If you answered "Yes," to one or more of the questions asked in Item 7 above, please continue with PART II or III.

Signature

Date (mm-dd-yyyy)

You should be aware that under the United States law a citizen who has performed any of the acts specified in Part I, Item 7 **with the intention of relinquishing United States citizenship** may have hereby lost United States citizenship. If you voluntarily performed an act listed in Part I, Item 7 with the intent to relinquish United States citizenship, you may sign Part II of this statement and return this form to us, and we will prepare the forms necessary to document your loss of U.S. citizenship. If you believe expatriation has not occurred, either because the act you performed was not voluntary or because you did not intend to relinquish U.S. citizenship, you should skip Part II, and complete Part III of this form.

PART II

STATEMENT OF VOLUNTARY RELINQUISHMENT OF U.S. CITIZENSHIP

I, _____ performed the act of expatriation indicated in Part I, Item 7,
_____ voluntary and with the intention of relinquishing my U.S. citizenship.
(a, b, c, d, or e)

Signature

Date (mm-dd-yyyy)

PART III

1. PLEASE CHECK "YES" OR "NO":

a. ARE YOU A NATIONAL OR CITIZEN OF ANY COUNTRY OTHER THAN THE UNITED STATES?

☐ YES ☐ NO

b. IF YES, OF WHAT COUNTRY?

c. IF YES, DID YOU ACQUIRE THAT CITIZENSHIP IN THE FOREIGN COUNTRY BY:

(i) BIRTH?

☐ YES ☐ NO

(ii) MARRIAGE?

☐ YES ☐ NO

(iii) NATURALIZATION OR REGISTRATION ON _____

(Date) (mm-dd-yyyy)

☐ YES ☐ NO

d. IF OTHER, EXPLAIN.

2. When did you first become aware that you might be a United States citizen (give approximate date)?

3. How did you find out that you were a citizen of the United States? (For example, did you always know you were a U.S. citizen? If not, when did you learn about your citizenship? Did someone tell you that you were a U.S. citizen?)

4. Describe as specifically as you can the act or acts you performed as indicated in Part I, Item 7. For example, by what means or in what kind of proceeding were you naturalized as a citizen of a foreign state? What was the nature of the oath you took? In what foreign army did you serve? What rank did you hold? What employment did you have and what were your responsibilities? Indicate precisely when and where the act was performed.

5. Describe in detail the circumstances under which you performed the act or acts indicated in Part I, Item 7. Did you perform the act or acts voluntarily? If not, in what sense was your performance of the act or acts involuntary? What was your intent toward your U.S. citizenship in performing the act or acts?

6. Did you know that by performing the act described in Part I, Item 7 you might lose U.S. citizenship? Explain your answer.

7. What ties did you have to the country where you performed the act indicated in Part I, Item 7? For example, at the time you performed the act, did you maintain a residence, did you own property, did you have family or social ties, did you vote?

8. What ties do you retain with the United States? For example, do you maintain a residence, have property, family or social ties, vote, file U.S. income or other tax returns?

Your answers on this form will become part of the official record in your case. Before signing this form, read over your answers to make certain that they are as complete and accurate as possible. If you would like to provide additional information you believe relevant to a determination of your citizenship status, you may attach separate sheets with that information.

After signing, return this form to the U.S. embassy or consulate in the enclosed envelope. If completing it at a post, return it to the person who asked you to complete it.

Signature

Date (mm-dd-yyyy)



Wednesday September 6, 2006

Renunciation of U.S. Citizenship

A. THE IMMIGRATION & NATIONALITY ACT

Section 349(a)(5) of the Immigration and Nationality Act (INA) is the section of law that governs the ability of a United States citizen to renounce his or her U.S. citizenship. That section of law provides for the loss of nationality by voluntarily performing the following act with the intent to relinquish his or her U.S. nationality:

"(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States ***in a foreign state*** , in such form as may be prescribed by the Secretary of State" (emphasis added).

B. ELEMENTS OF RENUNCIATION

A person wishing to renounce his or her U.S. citizenship must voluntarily and with intent to relinquish U.S. citizenship:

1. appear in person before a U.S. consular or diplomatic officer,
2. in a foreign country (normally at a U.S. Embassy or Consulate); and
3. sign an oath of renunciation

Renunciations that do not meet the conditions described above have no legal effect. Because of the provisions of section 349(a)(5), Americans cannot effectively renounce their citizenship by mail, through an agent, or while in the United States. In fact, U.S. courts have held certain attempts to renounce U.S. citizenship to be ineffective on a variety of grounds, as discussed below.

C. REQUIREMENT - RENOUNCE ALL RIGHTS AND PRIVILEGES

In the recent case of Colon v. U.S. Department of State, 2 F.Supp.2d 43 (1998), plaintiff was a United States citizen and resident of Puerto Rico, who executed an oath of renunciation before a consular officer at the U.S. Embassy in Santo Domingo. The U.S. District Court for the District of Columbia rejected Colon's petition for a writ of mandamus directing the Secretary of State to approve a Certificate of Loss of Nationality in the case because the plaintiff wanted to retain one of the primary benefits of U.S. citizenship while claiming he was not a U.S. citizen. The Court described the plaintiff as a person, "claiming to renounce all rights and privileges of United States citizenship, [while] Plaintiff wants to continue to exercise one of the fundamental rights of citizenship, namely to travel freely throughout the world and when he wants to, return and reside in the United States." See also Jose Fufi Santori v. United States of America, 1994 U.S. App. LEXIS 16299 (1994) for a similar case.

A person who wants to renounce U.S. citizenship cannot decide to retain some of the privileges of citizenship, as this would be logically inconsistent with the concept of citizenship. Thus, such a person can be said to lack a full understanding of renouncing citizenship and/or lack the necessary intent to renounce citizenship, and the Department of State will not approve a loss of citizenship in such instances.

D. DUAL NATIONALITY / STATELESSNESS

Persons intending to renounce U.S. citizenship should be aware that, unless they already possess a foreign nationality, they may be rendered stateless and, thus, lack the protection of any government. They may also have difficulty traveling as they may not be entitled to a passport from any country. Even if they were not stateless, they would still be required to obtain a visa to travel to the United States, or show that they are eligible for admission pursuant to the terms of the Visa Waiver Pilot Program (VWPP). If found ineligible for a visa or the VWPP to come to the U.S., a renunciant, under certain circumstances, could be permanently barred from entering the United States. Nonetheless, renunciation of U.S. citizenship may not prevent a foreign country from deporting that individual back to the United States in some non-citizen status.

E. TAX & MILITARY OBLIGATIONS /NO ESCAPE FROM PROSECUTION

Also, persons who wish to renounce U.S. citizenship should also be aware that the fact that a person has renounced U.S. citizenship may have no effect whatsoever on his or her U.S. tax or military service obligations (contact the Internal Revenue Service or U.S. Selective Service for more information). In addition, the act of renouncing U.S. citizenship will not allow persons to avoid possible prosecution for crimes which they may have committed in the United States, or escape the repayment of financial obligations previously incurred in the United States.

F. RENUNCIATION FOR MINOR CHILDREN

Parents cannot renounce U.S. citizenship on behalf of their minor children. Before an oath of renunciation will be administered under Section 349(a)(5) of the INA, a person under the age of eighteen must convince a U.S. diplomatic or consular officer that he/she fully understands the nature and consequences of the oath of renunciation and is voluntarily seeking to renounce his/her U.S. citizenship. United States common law establishes an arbitrary limit of age fourteen under which a child's understanding must be established by substantial evidence.

G. IRREVOCABILITY OF RENUNCIATION

Finally, those contemplating a renunciation of U.S. citizenship should understand that the act is irrevocable, except as provided in section 351 of the INA, and cannot be canceled or set aside absent successful administrative or judicial appeal. (Section 351(b) of the INA provides that an applicant who renounced his or her U.S. citizenship before the age of eighteen can have that citizenship reinstated if he or she makes that

desire known to the Department of State within six months after attaining the age of eighteen. See also Title 22, Code of Federal Regulations, section 50.20).

Renunciation is the most unequivocal way in which a person can manifest an intention to relinquish U.S. citizenship. Please consider the effects of renouncing U.S. citizenship, described above, before taking this serious and irrevocable action. If you have any further questions regarding this matter, please contact the Director, Office of Policy Review & Interagency Liaison, Bureau of Consular Affairs, U.S. Department of State, Washington, DC 20520.

[Return to Citizenship and Nationality](#)

Wednesday September 6, 2006

ADVICE ABOUT POSSIBLE LOSS OF U.S. CITIZENSHIP AND SEEKING PUBLIC OFFICE IN A FOREIGN STATE

DISCLAIMER: THE INFORMATION IN THIS CIRCULAR IS PROVIDED FOR GENERAL INFORMATION ONLY. QUESTIONS INVOLVING INTERPRETATION OF SECTION 349(A)(4) INA WITH RESPECT TO A PARTICULAR CASE SHOULD BE ADDRESSED TO THE BUREAU OF CONSULAR AFFAIRS' OFFICE OF POLICY REVIEW AND INTERAGENCY LIAISON.

The Department of State is the U.S. government agency responsible for determining whether a person located outside the United States is a U.S. citizen or national. A U.S. citizen who assumes foreign public office may come within the loss of nationality statute, which is Section 349 of the Immigration and Nationality Act of 1952 (INA), as amended, or other legal provisions as discussed below.

Currently, there is no general prohibition on U.S. citizens' running for an elected office in a foreign government. Under Article 1, section 9, clause 8 of the U.S. Constitution, however, U.S. federal government officers may not accept foreign government employment without the consent of Congress. In addition, certain retired and reserve U.S. uniformed personnel may not accept foreign government positions without the express permission of the Secretary of State and the Secretary of their department. These restrictions are reflected in the Department's regulations at 22 CFR Part 3a., and are based on 37 U.S.C. 801 Note; 22 U.S.C.2658.

With respect to loss of nationality, 349(a)(4) of the Immigration and Nationality Act (INA), as amended, is the applicable section of law. Pursuant to 349(a)(4), accepting, serving in, or performing duties of in a foreign government is a potentially expatriating act. In order to come within the Act, the person must either be a national of that country or take an oath of allegiance in connection with the position. Thus, the threshold question is whether the person's actions fall within the scope of this provision. Information used to make this determination may include official confirmation from the foreign government about the person's nationality, and whether an oath of allegiance is required.

In addition, the prefatory language of section 349 requires that expatriating act be performed voluntarily and "with the intention of relinquishing U.S. nationality." Thus, if it is determined that the person's action falls within the purview of 349(a)(4) INA, an adjudication of the person's intent must be made.

The Department has a uniform administrative standard of evidence based on the premise that U.S. citizens intend to retain U.S. citizenship when they obtain naturalization in a foreign state, subscribe to routine declarations of allegiance to a foreign state, or accept non-policy level employment with a foreign government. This administrative premise is not applicable when an individual seeks public office in a

foreign state, instead, the Department of State will carefully ascertain the individual's intent toward U.S. citizenship.

Because the Department's administrative practice presumes that U.S. citizens employed in non-policy level positions in a foreign government do not have the requisite intent to relinquish U.S. citizenship, there are no efforts to seek out or adjudicate the citizenship of citizens who fall into this category of employment. On the other hand, because there is no administrative presumption that U.S. citizens who hold policy-level positions in foreign governments necessarily intend to retain their U.S. citizenship, efforts are made to fully adjudicate such cases to determine the individual's intent. (Service in a country's legislative body is considered by the Department to be a policy level position.)

An Attorney General's opinion of 1969 states that service in an important foreign political position constitutes highly persuasive evidence of intent to relinquish U.S. citizenship. In some cases, it would appear that holding a foreign office may be incompatible with maintaining U.S. citizenship (e.g. if the position necessarily entails immunity from U.S. law). The Department does not normally consider such service alone, as sufficient to sustain the burden of showing loss of U.S. citizenship by a preponderance of the evidence when the individual has explicitly expressed a contrary intent. This is particularly true when the individual continues to file U.S. tax returns, enters and leaves the U.S. on a U.S. passport, maintains close ties in the U.S. (such as maintaining a residence in the U.S.), and takes other actions consistent with an intent to retain U.S. citizenship notwithstanding the assumption of a foreign government position. Conversely, a person who publicly denied an intent to retain citizenship or who stopped paying his/her taxes, traveled to the United States on a foreign passport, and abandoned any residence in the United States might be found to have intended to relinquish U.S. citizenship notwithstanding self-serving statements to the contrary. Therefore, the Department will consider statements, as well as inferences drawn from the person's conduct, in determining one's intent to remain a U.S. citizen. Intent is determined on a case-by-case basis in light of the facts and circumstances of each individual's case. If expressed intent and conduct are consistent with a lack of intent to relinquish U.S. citizenship, the Department would generally conclude that no loss has occurred.

For further information about possible loss of U.S. citizenship and seeking public office in a foreign state, please contact:

Director
Office of Policy Review and Interagency Liaison
CA/OCS/PRI
U.S. Department of State
SA-29
Washington, D.C. 20520
(202) 736-9110

01/2005



IRS, Treasury Release Guidance on Expatriation Reporting Requirements

IR-2005-49, April 22, 2005

WASHINGTON — Today Treasury and the IRS announced the release of Notice 2005-36 and revised Form 8854, Initial and Annual Expatriation Information Statement. The notice and the revised form and its instructions address the significant changes made by the American Jobs Creation Act of 2004 (AJCA) to the tax and information reporting rules affecting individuals who lose their U.S. citizenship or long-term resident status after June 3, 2004.

In addition to imposing new information reporting requirements on former citizens and long-term residents, AJCA provides that former citizens and long-term residents will continue to be taxed as U.S. citizens or residents until they (1) notify the Department of State of loss of citizenship or the Department of Homeland Security of termination of permanent resident status and (2) file an initial expatriation information statement with the IRS.

Form 8854, Initial and Annual Expatriation Information Statement, has been revised to permit individuals to meet the new notification and information reporting requirements imposed by AJCA. In particular, Form 8854 has been expanded so that it functions as both the initial and the annual expatriation information statements required by AJCA. Revised Form 8854 and its instructions also address how individuals should certify (in accordance with the new law) that they have met their federal tax obligations for the five preceding taxable years and what constitutes notification to the Department of State or the Department of Homeland Security.

Notice 2005-36 provides special rules for individuals who file the revised Form 8854 by June 15, 2005. Treasury and the IRS recognize that until the revised Form 8854 was released, individuals who lost U.S. citizenship or terminated long-term resident status after June 3, 2004 did not know how to meet the new notification and information reporting requirements imposed by AJCA. Accordingly, Notice 2005-36 provides that if an individual who loses U.S. citizenship or terminates long-term resident status after June 3, 2004 files the revised Form 8854 by June 15, 2005, the individual will be treated as having met his or her reporting obligations on the date on which the taxpayer provided the requisite notice to the Department of State or the Department of Homeland Security.

Form 8854 and its instructions are available at the agency Web site, IRS.gov, but will no longer be obtainable from U.S. embassies or consulates abroad. Individuals in the United States may contact the IRS toll-free at 1-800-829-1040 for more information (1-800-829-4059 for TTY/TDD). If overseas, individuals may contact the IRS at (215) 516-2000 (English-speaking only and not a toll-free number).

Links:

- Notice 2005-36 ([PDF 57K](#))
- Form 8854, Initial and Annual Expatriation Information Statement ([PDF 98K](#))

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